



NEW JERSEY FERTILIZER AND SOIL CONDITIONER LAW

NEW JERSEY DEPARTMENT OF AGRICULTURE
Division of Dairy and Commodity Regulation
P.O. BOX 330
Trenton, NJ 08625

NJSA 4: 9-15.1 THRU 4:9-15.42
Amended and Effective July 1, 2002

AN ACT to regulate the sale and distribution of commercial fertilizers and soil conditioners and repealing sections 4:9-1 through 4:9-15 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act may be referred to as the "New Jersey Commercial Fertilizer and Soil Conditioner Act of 1970."

2. This act shall be administered by the New Jersey Department of Agriculture.

3. As used in this act:

(a) "Commercial fertilizer" means a fertilizer material, mixed fertilizer or any other substance containing one or more recognized plant nutrients which is used for its plant nutrient content, which is designed for use or claimed to have value in promoting plant growth, and which is sold, offered for sale, or intended for sale; except that it shall not be considered to include unmanipulated animal or vegetable manures, agricultural liming materials, or wood ashes.

(b) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses, and nurseries.

(c) "Customer formulated mix" means a commercial fertilizer prepared expressly for, and according to specifications furnished prior to mixing by, the customer.

(d) "Soil conditioner" means any substance intended or claimed to improve the chemical, physical or biological characteristics of the soil which is sold, offered for sale, or intended for sale; except that it shall not be considered to include decomposed organic material having an ash content not exceeding 25% by dry weight, unmanipulated animal or vegetable manures, agricultural liming materials, or any other materials that may be exempted by regulation.

(e) "Brand" means a term, design, or trademark used in connection with a soil conditioner or with one or more grades of commercial fertilizer.

(f) "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis; provided, however, that fertilizer materials, bone meal, and similar raw materials may be guaranteed in fractional units.

(g) "Guaranteed analysis" means the minimum per-

centage of plant nutrients claimed and set forth in the manner prescribed in subsection 10(c) of this act.

(h) "Index value," means an expression of the actual analysis of a fertilizer compared to the guaranteed analysis determined according to the following formula: Multiply the total nitrogen value by 3, the available phosphoric acid value by 2, and the soluble potash value by one, and then add these figures separately for the actual analysis and for the guaranteed analysis to obtain, respectively, the total actual value and the total guaranteed value. The index value is obtained by dividing the total actual value by the total guaranteed value.

(i) "Official sample" means any sample of commercial fertilizer or soil conditioner taken by an agent of the Department of Agriculture and designated as "official" by the department.

(j) "Person" includes any individual, partnership, association, firm, or corporation.

(k) "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer or soil conditioner or who offers for sale, sells, barter, or otherwise supplied such products in this State.

(l) "Licensee" means a person who is licensed, or is required to be licensed, to distribute commercial fertilizers or soil conditioners under the provisions of this act.

(m) "Manufacturing facility," means any place where a commercial fertilizer or soil conditioner is manufactured, produced, compounded, mixed, blended, or in any way altered chemically or physically.

(n) "Label" means the display of all written, printed, or graphic matter on the immediate container or a statement accompanying a commercial fertilizer or soil conditioner.

(o) "Labeling" means all written, printed, or graphic matter on or accompanying any commercial fertilizer or soil conditioner, or the contents of any advertisements, brochures, posters, or television or radio announcements used in promoting the sale of such commercial fertilizer or soil conditioner.

(p) "Ton" means a net weight of 2,000 pounds avoirdupois.

(q) "Per cent" or "percentage" refers to the percentage by weight.

(r) "Department" means the New Jersey Department of

Agriculture and includes the State Board of Agriculture, the Secretary of Agriculture, the State Chemist, and all employees and agents thereof.

(s) "State Board" means the State Board of Agriculture of New Jersey.

(t) "Secretary" means the Secretary of Agriculture of New Jersey.

(u) "State Chemist" means the person appointed by the State Board, subject to the supervision of the secretary, for the purpose of administering this act.

4. The State Board of Agriculture may adopt additional definitions by regulations in accordance with section 33 of this act. Definitions of ingredients adopted by regulation shall be derived from authoritative publications and sources, such as those of the Association of American Plant Food Control Officials.

5. Every person who owns or operates a manufacturing facility in this State or under whose name commercial fertilizers or soil conditioners are distributed in this State shall obtain a license to manufacture or distribute such products.

6. The minimum annual license fee for a manufacturer or distributor shall be \$ 250.00. In the case of each person who owns or operates more than one manufacturing facility within this State there shall be an additional annual license fee of \$ 250.00 for each such additional manufacturing facility. In the case of each person who owns or operates any manufacturing facilities located outside of New Jersey, which distribute commercial fertilizers or soil conditioners within this State, there shall be an additional annual license fee of \$ 250.00 covering all such manufacturing facilities. Fees collected pursuant to this section shall be forwarded to the State Treasurer.

7. Applications for licenses shall be submitted to the State Chemist on forms furnished by his office and shall be accompanied by the appropriate fee. Upon approval by the State Board of Agriculture, a license shall be issued to the applicant. All licenses shall expire on June 30 of each year.

8. A person applying for a license to distribute specialty fertilizers shall, at the time of submitting his application, furnish the State Chemist with a label or facsimile thereof for each brand and grade of specialty fertilizer.

9. A person applying for a license to manufacture or distribute soil conditioners shall, at the time of submitting his application, furnish the State Chemist with a label or facsimile thereof for each soil conditioner. The State Board of Agriculture may require that the application for a license be accompanied by authentic experimental evidence to substantiate claims made for a soil conditioner.

10. Any commercial fertilizer distributed in this State in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

(a) The net weight or other measure prescribed by regulation.

(b) The brand and grade.

(c) The guaranteed analysis, in the following order and form:

(1) Total nitrogen (N) %

Available phosphoric acid (P₂O₅) . . %

Soluble potash (K₂O) %

(2) For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphatic materials, the total phosphoric acid or the degree of fineness or both may also be guaranteed.

(3) Guarantees for plant nutrients other than nitrogen, available phosphoric acid, and soluble potash may be permitted or required by regulation. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (including, but not limited to, oxides, salts, and chelates) may be required to be stated on the application for a license and may be required to be included as a parenthetical statement on the label. Other beneficial substances or compounds determinable by laboratory methods may also be required to be guaranteed by regulations adopted by the State Board of Agriculture with the advice of the Director of the Agricultural Experiment Station. When any plant nutrients or other substances or compounds are guaranteed they shall be subject to inspection and analysis in accordance with methods and procedures prescribed by regulation.

(d) The name and address of the licensee.

11. For each kind of commercial fertilizer distributed in bulk in this State, a written or printed statement of the information required by section 10 of this act shall accompany each delivery and be supplied to the customer at the time of delivery.

12. A customer formulated mix shall be designated "customer formulated mix" and, in lieu of the requirements of sections 10 and 11 of this act, shall be labeled to show the net weight, guaranteed analysis, and the name and address of the licensee and the customer.

13. A specialty fertilizer must be labeled as provided in section 10 of this act, and additional items may be required by regulation.

14. Any soil conditioner distributed in this State in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

(a) The net weight or other measure prescribed by regulation.

(b) The brand.

(c) An accurate statement of composition and purpose.

(d) The name and address of the licensee.

15. For each kind of soil conditioner distributed in bulk in this State, a written or printed statement of the information required by section 14 of this act shall accompany each delivery and be supplied to the customer at the time of delivery.

16. Each licensee shall pay to the Department of Agriculture for all commercial fertilizers and soil conditioners distributed in this State an inspection fee at the rate of \$0.30 per ton on all tonnage in excess of 10 tons per semiannual statement. Fees so collected by the department shall be forwarded to the State Treasurer.

Sales to persons owning or operating manufacturing facilities or exchanges between such persons are exempted from the inspection fee.

17. Every person who distributes a commercial fertilizer or soil conditioner in this State shall file with the State Department of Agriculture, on a form furnished by the State Chemist, semiannual reports for the periods ending December 31 and June 30, setting forth the number of net tons of soil conditioner or of commercial fertilizer by grade and form (that is, bags, bulk, liquid, or other forms) distributed in this State during such ½ year period. The report shall be due on or before the end of the month following the close of each period and shall be accompanied by payment of the inspection fee required under section 16 of this act. Information furnished under this section shall not be disclosed in such a way as to divulge the operation of any person.

18. When the State Board, after public hearing following due notice, finds it desirable to obtain or disseminate more detailed distribution statistics, it may by regulation prescribe a more comprehensive system of reporting.

19. If a licensee fails to file a tonnage report and to pay the inspection fee within 60 days after the end of the semiannual period, a collection fee of 10% of the amount due, but not less than \$10.00 in any event, shall be assessed against the licensee, and the amount of fees due shall constitute a debt against the licensee. In the event that a licensee fails to file the tonnage report and to pay the inspection fee, the Department of Agriculture may assess the amount due on the basis of previous tonnage reports filed.

20. When the distribution of a commercial fertilizer or soil conditioner involves sales or distribution to one or more intermediate distributors before sale or distribution to the consumer, the person who distributes to a nonlicensee is required to report the tonnage and pay the inspection fee, unless the report and payment have been made by a prior licensee.

21. It shall be the duty of the Department of Agriculture to sample, inspect, make analyses of, and test commercial fertilizers and soil conditioners distributed within this State at such time and place and to such an extent, as it may deem necessary to determine whether such products are in compliance with the provisions of this act. The department is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers and soil conditioners and to records relating to their distribution, subject to the provisions of this act and the rules and regulations adopted by the State Board of Agriculture pursuant thereto.

22. The methods of analysis and sampling utilized under section 21 of this act shall be adopted by the State Board of Agriculture on the basis of authoritative sources such as publications of the Association of Official Analytical Chemists.

23. The Department of Agriculture, in determining for administrative purposes whether any commercial fertilizer or soil conditioner is in violation of this act, shall base such determination solely upon official samples as defined in subsection 3(i) and obtained and analyzed in accordance with sections 21 and 22.

24. The results of an analysis of a sample of any commercial fertilizer or soil conditioner which indicates a

deficiency shall be forwarded promptly by the State Chemist to the licensee. Upon request and within 15 days of the date the analysis report is forwarded, the State Chemist shall furnish to the licensee a portion of any sample. If within 15 days after the forwarding of the analysis report indicating a deficiency no adequate evidence contradicting the analysis report is made available to the State Chemist, the report of the sample analysis shall become official and may be submitted to the purchaser.

25. If an official analysis shows that a commercial fertilizer is deficient in one or more of its guaranteed primary plant nutrients (nitrogen, available phosphoric acid, and soluble potash) beyond the investigational allowance as established by regulation or if the over-all index value of the fertilizer is below the level established by regulation, a penalty of 5 times the commercial value of such deficiency shall be assessed by the State Chemist against the licensee. Subsequent violation within two years of the first violation shall be subject to an additional penalty of not less than \$200.00 or more than \$1000.00.

26. For the purpose of determining the commercial values to be applied under section 25 of this act, the State Board of Agriculture shall determine and publish annually the values per pound of nitrogen, including water insoluble nitrogen, available phosphoric acid, soluble potash, and other plant nutrients as determined by the State Board, in commercial fertilizers in this State. The values so determined and published shall be used in determining and assessing penalties.

27. All penalties assessed under section 25 of this act shall be paid to the purchaser, or to a consumer who thereafter received possession of the lot represented by the sample analyzed, within 60 days after the date of notice from the State Chemist to the licensee. Receipts shall be obtained and forwarded promptly to the State Chemist by the licensee. If the purchaser or consumer cannot be found, the amount of the penalty shall be paid to the State Treasurer.

28. Nothing contained in this act shall prevent any person from appealing to a court of competent jurisdiction for relief from an assessment imposed under section 25 of this act.

29. If an official report of a sample analysis shows that a commercial fertilizer or soil conditioner is deficient beyond the investigational allowance as established by regulation in any constituents guaranteed pursuant to paragraph 10(c)(3) of this act, the penalties prescribed by regulation adopted by the State Board of Agriculture shall be applicable.

30. No person shall distribute a misbranded product. A commercial fertilizer or soil conditioner shall be deemed to be misbranded:

- (a) If its labeling is false or misleading in any particular.
- (b) If it is distributed under the name of another product.
- (c) If it is not labeled in accordance with any applicable provisions of sections 10, 11, 12, 13, 14 and 15 of this act and of regulations prescribed under this act.
- (d) If it purports to be or is represented as a commercial fertilizer, or is represented as containing a plant nutrient or

commercial fertilizer, unless such plant nutrient or commercial fertilizer conforms to the definitions or terms prescribed by regulation. In the adoption of such regulations due regard shall be given to commonly accepted definitions and official fertilizer terms such as those issued by the Association of American Plant Food Control officials.

31. No person shall distribute an adulterated product. A commercial fertilizer or soil conditioner shall be deemed to be adulterated:

(a) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to plant life when applied in accordance with direction, for use on the label, or if adequate warning statements or directions for use, which may be necessary to protect plant life, are not shown on the label.

(b) If its composition falls below or differs from that which it is purported to possess by its labeling.

(c) If it contains unwanted crop seed or weed seed.

32. The State Board of Agriculture shall publish in such form and as it may deem proper:

(a) At least once every 6 months, information concerning the distribution of commercial fertilizer and soil conditioners.

(b) At least once each year, results of analyses based on official samples of commercial fertilizer distributed within the State as compared with the guaranteed analyses prescribed under section 10.

33. The State Board of Agriculture, after public hearing and due notice, in accordance with the Administrative Procedure Act (P.L. 1968, c.410, C. 52:14B-1 et seq.), may adopt such rules and regulations as it deems necessary to carry into effect the full intent and purposes of this act.

34. The State Board of Agriculture may revoke, suspend, or refuse to renew the license of any licensee or refuse to issue a license to a person under this act upon finding that the licensee or applicant has violated any provision of this act or of the rules and regulations adopted thereunder. No license shall be revoked, suspended, or refused until the licensee or applicant shall have been afforded an opportunity for a hearing before the State Board or such person or persons as the State Board may designate to conduct such hearings.

35. The State Board of Agriculture may issue and enforce a written "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer or soil conditioner, or material purported to be commercial fertilizer or soil conditioner, when the State Chemist finds that said material is being offered or exposed for sale in violation of any provision of this act or any rule or regulation adopted thereunder. Such order may require that the material be held at a designated place until the violation has been corrected and written authorization for removal has been received from the Department of Agriculture. The State Chemist shall authorize removal of commercial fertilizer or soil conditioner so held whenever the requirements of this act have been met and any identifiable costs and expenses incurred by the department in connection with this action, due to a violation, have been paid.

36. Any lot of commercial fertilizer or soil conditioner which is in violation of this act shall be subject to seizure on complaint of the State Board of Agriculture to a court of competent jurisdiction in the area in which said product is located. In the event the court finds the product to be in violation of this act and orders the condemnation of said product, it shall be disposed of in any manner consistent with the quality of the product and the laws of the State:

Provided, that in no instance shall the disposition of said commercial fertilizer or soil conditioner be ordered by the court without first affording the owner an opportunity to apply to the court for release of the product or for permission to process or relabel the product to bring it into compliance with this act.

37. Any violation or threatened violation of any provision of this act or of any rule or regulation adopted thereunder may be restrained by the Superior Court in an action brought for such purpose by the Attorney General on behalf of the State Board of Agriculture.

38. Any person convicted of violating any provision of this act or of any rule or regulation adopted thereunder other than a violation involving a plant nutrient deficiency shall be subject to a penalty of not less than \$50.00 nor more than \$200.00 for the first offense and not less than \$200.00 nor more than \$1000.00 for any subsequent offense within a 3-year period. The penalty shall be collected and enforced in summary proceedings under the Penalty Enforcement Law (N.J.S. 2A: 58-1 et seq.) in the Superior Court.

39. Upon receiving any information of a violation of any provision of this act or of any rule or regulation adopted thereunder, the Secretary or any agent designated by him for such purpose, is empowered to hold hearings upon said violation and, upon finding the violation to have been committed, to assess a penalty against the violator in such amount, not to exceed the maximum limit set forth in section 38, as the Secretary deems proper under the circumstances. If the violator pays such penalty as settlement, no further prosecution shall be had upon that violation. Payment of such a penalty shall be deemed equivalent to a conviction for violation of this act.

40. Nothing in this act shall be construed as requiring the State Chemist or the Department of Agriculture to report a minor violation for prosecution or seizure proceedings when the State Chemist determines that the public interests will best be served by a suitable notice of warning in writing.

41. Nothing in this act shall be construed to apply to sales or exchanges of commercial fertilizer or soil conditioners between importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil conditioner to manufacturers or manipulators who have been licensed under this act.

42. If any provision of this act, or any application of any provision, is held invalid, the invalidity shall not affect other applications of the provision, or other provisions of the act, which reasonably can be given effect despite the invalidity. To this end, the provisions of this act are hereby declared to be severable.